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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/483,579	01/14/2000	Bruce A. Fogelson	77752	8561

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WELSH & KATZ LTD
120 South Riverside Plaza
22nd Floor
Chicago, IL 60614

EXAMINER

MCALLISTER, STEVEN B

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/483,579

Applicant(s)
Fogelson

Examiner
Steven McAllister

Art Unit
3627



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 14, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on Jan 28, 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 2167

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/28/03 and 4/14/03 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claim rejected under 35 U.S.C. 102() as being by .

4. Claim 1, 3- 5, 9, 11, 12, 19-21, 23-25, 31, 33, 34, and 36 are rejected under 35

U.S.C. 102(a) as being anticipated by "RFP Marketing Opportunities Abound At 'Design Your Dream House' Site" (RFP).

Art Unit: 2167

RFP shows building a third party web site for customer selection of building options; receiving from the customer through the site a selection of an option provided by a contractor; and collecting a commission from the builder

As to claims 4 and 5, RFP shows a webpage that is associated with a feature and where a plurality of options since a web site inherently has at least one page and RFP discloses providing options that can be chosen for features.

As to claim 9, RFP shows a second website associated with the first website for entry of information related to the customers.

As to claim 11, it is inherent that since the customer may designate a contractor and the contractor has access to the second website, that the second website may be accessed by a party designated by the customer.

As to claim 12, since the information entered by the contractor is regarding a certain job and that job is unique to the customer, the information inherently comprises an identifier of the customer, for instance by customer name, customer number, job name or job number.

As to claims 21, 23-25, 29, and 31, RFP inherently shows means for performing all steps since performing the steps is shown, as described above.

As to claim 33, RFP inherently shows the means for providing the third website comprising a server, since such a server must exist to support the first and second websites.

Art Unit: 2167

As to claim 34, RFP shows a web site provided by a third party for selecting options. It inherently shows selection and commission processors since such functional subsystems must exist to allow customers to select and to collect the commission as disclosed in the reference.

As to claim 36, RFP inherently show a web page adapted to provide a feature since a website as shown by the reference inherently has at least one web page and the reference shows displaying features.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7, 8, 14, 15, 27, 28, 38-42, is rejected under 35 U.S.C. 103(a) as being unpatentable over RFP.

As to claims 7, 8, 27, 28, and 38, it is noted that RFP discloses affiliate programs so it inherently discloses receiving a commission on purchases resulting from a click on a hyperlink on the RFP web page. RFP does not disclose a link to a manufacturer. However, it is notoriously old and well known to provide a link on a web page to a manufacturer to provide more information about a product. It would have been obvious to one of ordinary skill in the art to

Art Unit: 2167

modify the method and apparatus of RFP by providing such a link in order to give the customer the most up to data information.

As to claims 14 and 15, RFP shows all elements of the claim except showing an advertisement and charging the vendor for the display. However, it is notoriously old and well known in the art to show advertisements on a web site. It would have been obvious to one of ordinary skill in the art to modify the method of FRP by placing and charging for ads in order to increase revenue.

As to claims 39-42, RFP shows all elements of the claims except that the options are fixtures to be installed. However, it is notoriously old and well known in the art to choose fixtures for installation in a new house. It would have been obvious to one of ordinary skill in the art to modify the method and apparatus of RFP by presenting options for fixtures.

7. Claims 6, 17, 18 26, 37, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFP in view of FTD website.

As to claims 6, 26, and 37, RFP shows all elements of the claim except that a plurality of web pages are used to show the features and options. FTD shows a plurality of pages showing different features Centerpieces and Poinsettias.

As to claim 17, it is noted that FTD shows providing upselling options (such as Deluxe or Premium) based on the option (such as Fresh Flowers Centerpiece) chosen by the customer.

As to claim 18, it is noted that FTD shows another web site accessible by the general public with general information on products available from its contractors.

Art Unit: 2167

As to claim 43, it is noted that FTD shows a third party virtual showroom of products.

8. Claims 10, 16 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFP in view of "John Murtaugh -- Builder's Spotlight" (Murtaugh)..

RFP shows all elements of the claim except having the contractor customize the site by entering specific features. Murtaugh teaches customization by inputting only certain features and options by the contractor. It would have been obvious to one of ordinary skill in the art to modify the method and apparatus of RFP by allowing customization by providing specific features and options by the contractor as taught by Murtaugh in order to enable the contractor to streamline the costing and building process.

9. Claims 2, 13, 22, 32, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFP in view of Colvin, Sr.

As to claims 2, 13, 22, 32, and 35, RFP shows all elements of the claim except password protecting the websites. Colvin, Sr. shows using password protection. It would have been obvious to one of ordinary skill in the art to password protect the website in order to provide data security.

Response to Arguments

10. Applicant's arguments filed 4/14/03 have been fully considered but they are not persuasive.

Applicant argues that the examiner erred in finding the CFR 1.131 declaration submitted 1/28/03 unpersuasive. The examiner respectfully disagrees. CFR 1.131(b) states in its entirety:

Art Unit: 2167

The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence satisfactorily explained.

While the Applicant states "By at least April of 1999, conception of my invention was complete", the examiner believes that the Applicant has not established conception of the claimed invention by the date of the reference in question. In the declaration, the Applicant does not claim that conception of the *claimed* invention was complete by that date. Additionally, the viewgraphs provided as exhibits do not support that all elements of the claimed invention were conceived before the date of the reference. A statement in the declaration stating that the Applicant had established conception of all elements of claimed invention before the date of the reference would be sufficient to remove the reference.

Regarding Applicant's other arguments, it is not clear toward which claims they are directed. However, as best understood, they are addressed below.

The applicant argues that the selection of options is different than in the claim. However, it is not clear from RFP that "options" refers to topography or architecture. Rather it appears to be directed to options in the design, which while encompassing architecture, also encompasses "product, service, or installation service options" as claimed.

Art Unit: 2167

While the existing software at the time of publication was not internet ready, the publication discloses such software used in the internet environment.


It is not clear to which contention Applicant refers in discussing the collection of a commission. However, there is an explicit statement that a commission will be collected.

Regarding the forum, it is not clear to which claim Applicant refers. As a general concept, however, the examiner disagrees that a customer has to have a preexisting relationship to be a customer. When shopping in a store, one is a customer regardless of whether he has bought there before, has a pending contract of some type or actually purchases on that occasion.

In summary, the examiner believes that RFP shows the steps and elements of the claims.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052.



Steven B. McAllister

July 25, 2003